

SB 5728 -- Liability Reform Act of 2003

***Reducing costs for consumers, homebuyers and families
by returning “justice” to the civil justice system.***

The overall annual cost of the American tort system, including payments to injured people, legal fees, and administrative expenses, was at least \$165 billion in 1999. That was about 2 percent of gross domestic product – twice as much as in most industrial countries.

Multi-family home construction in Puget Sound has dropped by more than a third over the last two years due to lack of available and affordable liability insurance. Washington has seen roughly 31 percent of its doctors leave the state due to rising medical malpractice liability costs.

This is a business issue as well as a family issue because it is affecting our citizens' ability to find affordable housing and good doctors.

We are not alone. Several states have enacted similar proposals to address liability reform in the past few years, including California, Mississippi, Nevada, Ohio and Pennsylvania.

Components of Senate Bill 5728 include:

- Joint and several liability reform – Protects injury victims and consumers by tying money awards to actual fault. Under current law, it is possible for someone to be found 10 percent responsible for an action yet made to pay 100 percent of the judgment. Reforming this law will prevent lawyers from going after the “deepest pockets.”
- Medical malpractice liability reform – Based on California's Medical Injury Compensation Reform Act (MICRA). This component does the following:
 - Places a \$250,000 cap on non-economic damages in any action or arbitration;
 - Requires that evidence of collateral sources of payment to the injured party be presented to juries;
 - Establishes a sliding scale cap on contingent attorneys' fees;
 - Requires a 90-day advance notice of claim;
 - Creates a three-year statute of repose;
 - Allows for periodic payment for future damages;
 - Allows binding arbitration by contract between patients and their physician or health care provider;
 - Changes the burden of proof in malpractice cases from a “preponderance of the evidence” to a standard of “clear, cogent and convincing evidence”;
 - Requires that liability in malpractice cases to be “several,” rather than “joint and several.”

- Employer reference checks – Employers who, in good faith, disclose work-related information about an employee would be protected from lawsuits. This keeps former employees from suing simply because of a “bad performance” review.
- Tort judgment interest rates – Currently, a defendant who loses an appeal will pay an interest rate of at least 12% on the judgment. This provision ties the interest rate to two percentage points above the 26-week Treasury bill rate. (Currently about 1.16%.) This component is NOT retroactive and will only affect new cases once the bill is enacted.
- Seatbelt defense – Under current law, in auto accident litigation, a defendant is not allowed to enter into evidence whether the plaintiff was wearing his or her seatbelt at the time of the accident. This provision would allow this information to be presented to the jury.
- Errors of judgment – Says the state is not liable when a Department of Social and Health Services or Department of Corrections employee selects a course of action that results in a poor outcome as long as the employee exercised “reasonable care and skill” in choosing the course of action.
- Government liability (gross negligence standard) – In its governmental capacity, the state or a local governmental entity is liable in tort only to the extent that the actions or omissions of its employees constitute gross negligence.
- Construction liability – If a homeowner contributes to a construction defect, that contributory fault will be taken into account when apportioning liability. This will help keep contractor liability insurance rates from increasing further and in turn will assist in keeping homes more affordable.